

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

IAN CHARLES MORRIS,

Defendant-Appellant.

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UNPUBLISHED  
December 9, 1997

No. 176347  
Oakland Circuit Court  
LC No. 93-128864 FH

AFTER REMAND

Before: Gribbs, P.J., and Sawyer and Young, JJ.

MEMORANDUM.

This matter was remanded to the circuit court for a determination whether the prosecution could rebut the presumption of prejudice attributable to a trial court's ex parte submission of supplemental written instructions to a deliberating jury.<sup>1</sup> See *People v France*, 436 Mich 138, 163; 461 NW2d 621 (1990). In our prior opinion, this panel framed the issue to be addressed on remand as follows:

Assuming the issue is not already moot, the trial court should hold a hearing regarding whether the prosecution can adequately rebut the presumption of prejudice caused by the trial court's ex parte communication with the deliberating jury. [*People v Ian Charles Morris*, unpublished opinion per curiam of the Court of Appeals, issued August 1, 1997 (Docket No. 176347) at p 4.]

We retained jurisdiction.

On remand, a hearing was held, the principal thrust of which appeared to be plaintiff's effort to establish that no supplemental jury instructions were, in fact, received by the jury – ex parte or otherwise – rather than rebut the presumption of prejudice by the method suggested in *France, supra* at 163, n 43. The hearing concluded without the trial court making any ruling on the question of prejudice framed by this Court in its opinion, nor did the trial court alternatively find that no ex parte communication in fact occurred.

Accordingly, because plaintiff failed to rebut the presumption of prejudice on remand as required by *France, supra*, and as directed in our opinion, the judgment of conviction is reversed.

Finally, this Court notes with distaste the unnecessarily hostile and unprofessional manner in which counsel for defendant addressed the trial court during the hearing on remand.

/s/ Roman S. Gibbs

/s/ David H. Sawyer

/s/ Robert P. Young, Jr.

<sup>1</sup> We noted in the text of the opinion and in footnote 2, the remand was necessitated by the fact that, when confronted by defense counsel's accusation that the trial court had engaged in an ex parte communication with the jury by providing it with written jury instructions, the trial court appeared to acquiesce in the accusation. Rather than contradict the accusation, the trial court suggested that it was authorized to provide, ex parte, a deliberating jury with written instructions under the court rules. As we noted in our original opinion, the court rules do authorize submission of written jury instructions but not on an ex parte basis.